IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 117 of 1996

Date of Decision: 20.12.2007

M/s Dalu Ram Ram Chander, Moga

....Applicant

Versus

The Commissioner of Income-tax, Jalandhar (now CIT Amritsar)

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. M.L.Puri, Advocate for the applicant-assessee.

Mr. Sanjiv Bansal, Advocate for the respondent-revenue.

AJAY KUMAR MITTAL, J.

On a direction issued by this Court vide order dated 24.1.1996 under Section 256 (2) of the Income Tax Act, 1961 (in short "the Act"), the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") has referred the following question of law for the assessment years 1974-75 and 1975-76:-

> "Whether on the facts and circumstances of the case, the Tribunal was right in rejecting the explanations furnished by the assessee for late filing of the returns

when the same explanations had been accepted by the Income-tax Officer while waiving interest under Rule 117-A?"

The assessment years in question are 1974-75 and 1975-76 corresponding to the previous years ending on 31.3.1974 and 31.3.1975 respectively. The assessee did not file its returns of income for the assessment years under reference within the stipulated period and the same were filed on 23.12.1976 only on receipt of notice under Section 148 of the Act. The Income Tax Officer while framing assessments, imposed penalty of Rs.65,710/- and Rs.15,400/- under Section 271 (1)(a) of the Act for the assessment years in question. The assessee filed two appeals before the CIT (A) which were disposed of by a common order dated 10.9.1984 confirming the order of the Assessing Officer imposing the penalty. The CIT (A) held that the ITO had not properly calculated the period for which the penalty was leviable for the assessment years 1974-75 and 1975-76 and directed to recalculate the amount of penalty for the period of eight months (1.4.1976 to 23.12.1976) in each assessment year. Feeling still not satisfied, the assessee filed two appeals before the Tribunal who vide order dated 14.3.1986 dismissed the appeals affirming the order passed by the CIT(A). The applications filed by the assessee for reference to this Court under Section 256 (1) of the Act were also dismissed by the Tribunal. On the petitions filed by the assessee under Section 256 (2) of the Act, this Court directed the Tribunal to state the case and refer the question of law reproduced above for its opinion.

We have heard learned counsel for the parties and perused

the record with their assistance.

Learned counsel for the assessee urged that the revenue had waived the levy of interest under Section 139 (8) read with Rule 117A of the Income Tax Rules, 1962 (hereafter referred to as "the Rules") and it was held that sufficient cause existed for the assessee not to file the return in time whereas the penalty under Section 271 (1) (a) of the Act has been imposed ignoring those considerations and the findings, thus, recorded are unsustainable and levy of penalty deserves to be set aside. He placed reliance on Karnataka High Court judgment in **S. Govindaraju v. Commissioner of Income-Tax, Karnataka-I, [1982] 138 ITR 495** in support of his submission.

Controverting the submission, Mr. Sanjiv Bansal, learned counsel for the revenue supported the order of the Tribunal and argued that interest under Section 139 (8) of the Act in respect of assessment year 1974-75 had been waived under Rule 117 A (iv) and not under clause (v) of the Rules in view of the fact that the return had been filed in pursuance to notice under Section 148 of the Act and not that there existed sufficient reasons for delay in filing the return. Adverting to the assessment year 1975-76, the learned counsel submitted that the Assessing Officer after applying sub rule (v) of Rule 117 of the Rules held that there existed sufficient cause for late filing of return upto 31.3.1976 and reduced the interest by 50% as the period of 8 complete months from 1.4.1976 to 23.12.1976 was held to be not satisfactorily explained by the assessee as per the findings. Learned counsel further submitted that even after applying ratio of the judgment in S. Govindaraju's case (supra), the order passed by the CIT (A) and

affirmed by the Tribunal is just and in order. He placed reliance on a Full Bench judgment of this Court in **Commissioner of Income-Tax, Patiala-II v. Patram Dass Raja Ram Beri, [1981] 132 ITR 671** and canvassed that no mens rea is required for imposing penalty under Section 271 (1)(a) of the Act and the assessee having defaulted in filing the return in time invited imposition of penalty. However, an assessee had a right for deletion of penalty in one eventuality in case he could establish that there existed reasonable cause for not filing the return in time. He having failed on facts, cannot derive benefit from legal proposition enunciated in S. Govindaraju's case (supra).

We have thoughtfully considered the respective submissions of the learned counsel for the parties and do not find any merit in the contention of the learned counsel for the assessee.

We may first crystalize the legal position. The provisions of Sections 139 (8) and 271 (1)(a) of the Act and Rule 117A of the Rules which are relevant for resolving the controversy involved in the present reference as they existed at the relevant time are reproduced as under:-

Section 139 (8)

> "8 (a) where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Income-tax Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at twelve per

cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source:

Provided that the Income-tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

Explanation 1: For the purposes of this sub-section "specified date", in relation to a return for an assessment year, means,-

(a) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other assessee, the 30th

day of June of the assessment year.

Explanation (2): For the purposes of this sub-section, where the assessee is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, the tax payable on the total income shall be the amount of tax which would have been payable if the firm had been assessed as an unregistered firm.

(b) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 264, the amount of tax on which interest was payable under this sub-section has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded."

Section 271(1)(a)

271. (1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the

time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or

(b) XX XX XX

(c) XX XX XX

(d) XX XX XX

he may direct that such person shall pay by way of penalty.

(i) in the cases referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent of the assessed tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the assessed tax.

Explanation: In this clause, “assessed tax” means tax as reduced by the sum, if any, deducted at source under Chapter XVIIB or paid in advance under Chapter XVIIC;

(ii) XX XX XX

(iii) XX XX XX”

Rule 117 A

117A. In respect of assessment relating to an assessment year commencing on or before the first day of April, 1988, the Assessing Officer may reduce or waive the interest payable under section 139 in the cases and in the circumstances mentioned below,

namely:-

(i) where the return of income is furnished by a person who has been treated under section 163 as an agent of a non-resident and is assessed in respect of the latter's income;

(ii) where the return of income is furnished by an assessee whose only source of income during the relevant previous year is a share in the income of an unregistered firm which has been assessed on its total income in respect of that previous year under clause (b) of section 183;

(iii) where the return of income of a deceased individual is furnished by his legal representative and the legal representative satisfies the Assessing Officer that he had sufficient cause for not furnishing such return within time;

(iv) where the return of income has been furnished in pursuance of a notice issued under section 148;

(v) any case in which the assessee produces evidence to the satisfaction of the Assessing Officer that he was prevented by sufficient cause from furnishing the return within time:

Provided that the previous approval of the Deputy Commissioner has been obtained where the amount

of interest reduced or waived, as the case may be, under clause (iv) or clause (v) exceeds one thousand rupees."

Section 139 (8) provides for charging of interest in case of delayed filing of return. According to the said Section, where an assessee who furnishes a return either under sub-section (1), or sub-section (2) or sub-section (4) after the specified date or does not furnish, whether the Assessing Officer has extended the date for filing of such return or not, the assessee is liable to pay simple interest at the rate of 12% per annum. The period for which an assessee is liable is to be computed from the date immediately following from such specified date to the date of filing return or where no return is filed, the date of completion of assessment under Section 144 of the Act. The interest is calculated on the amount of tax payable on the total income as determined on regular assessment which is reduced by advance tax, if any, paid and tax deducted at source. However, the proviso grants an exception and empowers the Assessing Officer to reduce or waive the interest payable by an assessee under this Section under circumstances as may be prescribed.

Rule 117A of the Rules prescribes the circumstances in which reduction or waiver of interest payable under Section 139 (8) can be allowed by the Assessing Officer. Sub rules (iv) and (v) are relevant for the purposes of present adjudication. Sub rule (iv) stipulates that the Assessing Officer may reduce or waive levy of interest under Section 139 of the Act in those cases where the return is filed in pursuance of issuance of notice under Section 148 of the Act. Sub rule

(v) envisages a situation for reduction or waiver by the Assessing Officer, where the assessee produces evidence to the satisfaction of the Assessing Officer that he was prevented by sufficient cause from filing the return in time.

The cumulative effect of the aforesaid provisions of Section 139 (8) of the Act and Rule 117A (v) of the Rules is that the Assessing Officer is required to provide an opportunity to be heard to the assessee before levying interest in order to enable the assessee to explain the circumstances under which the delay had occurred. In case, the assessee is able to show sufficient cause for late filing of return, the Assessing Officer may reduce or waive imposition of interest. The levy of interest is not automatic or mechanical. The discretion vested in the Assessing Officer is to be exercised judiciously on certain objective factors. The exercise of discretion by the Assessing Officer must be manifest so that it could be gathered by all as to whether the discretion has been properly exercised or not.

Now adverting to the interpretation of Section 271 (1)(a) of the Act, the Full Bench of this Court in Patram Dass Raja Ram Beri's case (supra) had categorically laid down that for imposition of penalty under Section 271(1)(a) of the Act, no mens rea on the part of the assessee is required to be established by the revenue. The Full Bench concluded, thus:-

> "We take the view that the basic issue before us can be truly answered only when viewed against the larger perspective of the scheme and the provisions of the I.T.Act, 1961. It is manifest that the Act first

prescribes the duty of filing the income-tax return within the prescribed time and then postulates three distinct sanctions for the enforcement of that statutory obligation. These are, by levying interest under s.139 by imposing penalty, if the delay has been occasioned without reasonable cause under s.271(1)(a), and by convicting and sentencing the assessee by treating such failure to file the returns as an offence, if it was proved that this was wilful. These are three distinct and varying degrees of non-filing of returns or filing them beyond the prescribed time and the statute clearly keeps up the distinctions at all stages, between the three modes. While the Legislature has been content by imposing only a financial penalty on reaching satisfaction as to the absence of reasonable cause, it has prescribed the presence of wilful failure to furnish returns in due time to make it an offence punishable with a minimum imprisonment added with fine. Equally significant is the distinction between the word “penalty” as contemplated by s.271(1)(a) and the stringent punishments provided by s.276CC. Reference to s.271(1)(a)(i) of the Act would indicate that the Legislature itself viewed this “penalty” as an addition to the amount of tax, if any, payable by the assessee and the same is calculated in relation to the amount

of the assessed tax. It would be thus obvious that the penalty imposed here is in a way related to tax and as was authoritatively said in C.A.Abraham's case[1961] 41 ITR 425 (SC) is part of the assessment proceedings. Now, what is imposed under s.276CC of the Act is altogether different in nature. The proceedings therein are neither part of the assessment proceedings nor are they directly proportionate to the amount of tax leviable. The offender under cls.(i) and (ii) thereof can be visited with rigorous imprisonment which may extend to seven years or three years respectively with an addition of fine as well. It seems unnecessary to elaborate the point because the difference which the statute maintains between the penalty leviable under s.271(1)(a) and the punishment imposable under s.276CC of the Act, is demonstratively patent. Whilst for levying penalty, absence of reasonable cause has to be shown, for imposing punishment, wilful failure has to be established and as a settled canon of criminal law, the burden to do so rests on the prosecution. Wilfulness certainly brings in the element of guilty mind and thus the requirement of a *mens rea*, but the presence or absence of a reasonable cause can be something wholly objective and far removed therefrom. Thus from the provisions

> of the Act itself, it irresistibly emerges that the element of *mens rea* is made an ingredient for the offence under s.276CC of the Act and not for the mere penalty proceedings under s.271(1)(a)".

However, an exception has been carved out in favour of the assessee. Wherever, an assessee establishes that there existed a reasonable cause for late filing of return, that an Assessing Officer could reduce or waive the penalty imposable on the assessee. The relevant portion of the judgment reads thus:-

> "We must, therefore, conclude on the larger principle, in the light of the broader scheme of the I.T.Act, 1961, the specific language of s.271(1)(a) and the weight of precedent, that the doctrine of *mens rea* is not attracted to the penalty proceedings within the four corners of the aforesaid section. The only requirement of the statute thereunder is the presence or absence of reasonable cause for the tax delinquency and no other. Therefore, inducting the requirement of a deliberate defiance of law, or contumacious conduct, or dishonest intention, or acting in conscious disregard of the statutory obligations, is unwarranted under s.271(1)(a) of the Act."

Now having arrived at the interpretation of the aforesaid provision, we make reference to the expression "sufficient cause" referred in Rule 117A and "reasonable cause" occurring in Section 271

(1)(a) of the Act. According to us, there is no substantial difference between the "sufficient cause" and the "reasonable cause". The Assessing Officer while exercising the powers under the aforesaid Rules and the Section exercises discretionary power in an objective manner to find out - whether or not the cause show is sufficient or reasonable to take away the assessee from the ambit of rigour imposed by either Section 139 (8) or 271 (1)(a) of the Act. But the mere difference in such phraseology, it cannot be said that what is a reasonable cause is not a sufficient cause or vice versa. The Karnataka High Court in S. Govindaraju's case (supra) had also laid down in the aforesaid terms. The relevant portion reads thus:-

> ".....The difference in the language of r.117A(v) of the Rules and the language of s.271(1)(a) of the Act is that the term "sufficient cause" has been used in the rule while in the section "reasonable cause" has been used. Otherwise, the nature of the power to be exercised by the authority concerned in both the aforementioned rule and the section is similar inasmuch as they are discretionary powers exercised to find out whether or not the cause shown is sufficient or reasonable to avoid the rigour imposed by either s.139(8)(a) or s.271(1)(a) of the Act. In the case of s.271(1)(a) of the Act it is already settled law that without affording an opportunity to the assessee proceeded against under that section, no penalty can be imposed on him. Regard being had to the

cumulative effect of s.139(8)(a) of the Act and r.117A (v) of the Rules, one 'has necessarily to infer that the assessing officer is under an obligation to afford an opportunity to the assessee as to why interest should not be charged unless sufficient cause is shown for the delay in filing the return. Mere mechanical computation of the interest without informing the assessee that such interest is being charged would totally deprive the assessee of explaining the delay in filing the return. Therefore, on the well-established principles of construction of a taxing statute, while it must be held that the ITO in computing the assessment of an assessee who has filed a belated return, must necessarily first make a proposal to impose interest under s.139(8)(a) of the Act, as, otherwise, it puts the assessee at a disadvantage as pointed out by me earlier. If that opportunity is not afforded to the assessee, then r.117A(v) of the Rules becomes redundant in the statute, as no occasion arises for the assessing authority to exercise the discretionary jurisdiction vested in it. Therefore, that part of the order of the 2nd respondent-ITO imposing interest under s.139(8)(a) of the Act, suffers from the infirmity of not being in accordance with the procedure laid down by law and is, therefore, liable to be set aside".

Thus, it is concluded that the Assessing Officer cannot ignore the explanation tendered by an assessee for waiver of interest under Rule 117A of the Rules while deciding penalty proceedings under Section 271 (1)(a) of the Act.

The legal position having summarized as noted above, we advert to the facts of the present case. The Tribunal in para 11 of its judgment had concluded thus:-

> "After carefully perusing the facts and circumstances of the case which have been set out in sufficient detail in the earlier paragraphs of this order. We are of the view that the ratio of the decision of the Karnataka High Court in the case of CIT Vs. Govinderaju (Supra) is applicable to the assessment year 1975-76 and not to the assessment year 1974-75. As has been stated earlier, in the assessment year 1975-76 the ITO has reduced by 50% the interest charged u/s 139 (8) by taking recourse to sub-rule (v) of Rule 117A of the I.T. Rules. From the order waiving the interest it can be reasonable presumed that the ITO was satisfied that the assessee was prevented by sufficient cause from filing the return for the assessment year 1975-76 till 31.3.76. Following the decision of the Karnataka High Court, the contention of the assessee that it was prevented by reasonable cause from filing the return of the A.Y. 75-76 is accepted for the period 1.8.75 to

31.3.76. For the remaining period the explanation of the assessee does not hold any water. It is evident from record that the assessee never made any effort whatsoever to approach the ITO for extension of time to file the return. Its representatives claim that they had requested the ITO verbally is neither substantiated by any entry in the order-sheet not by any record mentioned by the assessee. The assessee has completely failed to discharge its legal obligations not in the matter of filing the return in time but also in approaching the ITO for seeking extension of time. The assessment record of the assessee is full of instance when it has failed to comply with the notices issued and other requisitions made by the assessing officer. The assessee is certainly guilty of wilful neglect. Therefore, the order of the ITO holding the assessee liable to penalty U/s 271 (1)(a) of the Act in the assessment year 75-76 is upheld. However for the reasons mentioned above the period of delay for which the assessee is liable to penalty under this section is restricted to 01.4.76 to 23.12.76. This will mean that the penalty for late filing of the return shall be charged for eight complete months. The ITO is directed to recalculate the amount of penalty accordingly and issue revised demand notice and challan.

As far as the penalty order for assessment year 74-75 is concerned, in our view the ratio of the decision in the case of CIT Vs. S. Govindaraju is not applicable. No doubt the ITO has completely waived interest charged u/s 139 (8) in this assessment year but while waiving this interest the ITO has not invoked the provision of sub rule (v) of Rule 117-A. He has invoked the provision of waiver of interest where the return of income is furnished in pursuance of notice issued u/s 148. In other words the ITO has not considered whether there was sufficient cause for the delay in filing of the return and, therefore, the assessee deserves relief by way of waiver of interest. The ITO has mechanically applied the provisions of sub-rule (iv) of Rule 117-A without going deep into the facts and circumstances of the case especially the assessee's conduct is not complying with the notice issued and not applying for extension of times. It is pertinent to mention here that the letter dated 21.8.74 intimating the loss of account books, on which the assessee is placing of much reliance to seek relief from the penalty levied, was filed during the course of assessment proceedings for the assessment year 1973-74. This letter was in response to notice issued by the ITO U/s 142 (1) of the Act during the course of proceedings for the A.Y.

73-74. The assessee never filed any letter either in the assessment year 74-75 or 75-76 intimating the loss of books of account and the consequential difficulty faced by it and, therefore, its inability to file the return nor it applied for extension of time in the prescribed form. The assessee's conduct throughout the proceeding for the assessment year 74-75 and 75-76 if anything, is one of wilful neglect and utter disregard of the legal obligations cast on him by the various provisions of the Act. The assessee's explanation that it could not file the return as it is endeavouring to reconstruct its accounts, is not supported by any documentary or other evidence. In fact during the course of hearing of the appeal the assessee's representative expressed their inability to file any such documentary evidence. They kept harping on the only explanation that they continued trying to conduct their debtors and creditors for ascertaining latest state of their account. The explanation of the assessee that the difference in its trial balance (excess of assets over inability) was due to certain creditors not forthcoming with their claims, cannot be accepted without an element of doubt. As has been pointed out by the IAC in his directions issued U/s 144-A the assessee was trying to cover up its unexplained cash credits. All this indicates that

> the assessee was deliberately binding its time to file the return and take the benefit of spread over. Under these circumstances, we think it is a fit case for levy of penalty U/s 271 (1)(a). However as the authorities below have taken contradictory stand while on the hand levying penalty U/s 271 (1)(a) and on the other hand waiving interest charged u/s 139 (8) and they have impliedly through the assessment orders and directions issued under section 144-A accepted the assessee's version that its books of account were lost, the assessee gets benefit of doubt. While confirming ITO's penalty order that penalty under section 271 (1)(a) is leviable, the period for which the penalty is leviable in confirmity with our findings for the assessment years 1975-76 two assessment for A.Y. 74-75 and 75-76 are clearly interlinked the period of default is restricted to 1.4.76 to 23.12.76. Accordingly, the ITO is directed to recalculate amount of penalty for the period of eight complete months and issue revised demand notice and challan."

The Tribunal after appreciating the facts and law had concluded that the assessee had proved the sufficient cause for the assessment year 1975-76 only upto 31.3.1976 and the interest had been reduced by 50%. Accordingly, the penalty had also been levied in terms thereof for 8 complete months only. However, as regards case

for the assessment year 1974-75 is concerned, in that case, the interest was not waived by the Assessing Officer by resorting to sub rule (v) but by relying upon sub rule (iv) and, therefore, the assessee could not derive any benefit from complete waiver of interest in this case. However, the assessee had been able to prove reasonable cause upto 31.3.1976 in this case as well. Accordingly, the assessee has been held liable to pay penalty thereafter, i.e. from 1.4.1976 to 23.12.1976, only for 8 complete months. The order passed by the Tribunal is, thus, in conformity with law.

In view of the above, the reference is disposed of accordingly. No costs.

(AJAY KUMAR MITTAL)
JUDGE

December 20, 2007 **(M.M. KUMAR)**
gbs **JUDGE**